

<sup>2</sup> The Board notes that, following the March 22, 2021 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

### **ISSUE**

The issue is whether appellant has met her burden of proof to establish entitlement to continuation of pay (COP).

### **FACTUAL HISTORY**

On January 13, 2021 appellant, then a 27-year-old food service worker, filed a traumatic injury claim (Form CA-1) alleging that on July 10, 2020, while delivering food trays to hospital patients and through coworkers, she was exposed to and contracted COVID-19. She stopped work on July 12, 2020 and returned to work on December 15, 2020.

In support of her claim, appellant submitted laboratory test results, dated July 10 and 28, 2020, which revealed that appellant tested positive for COVID-19.

Appellant also submitted requests for Emergency Paid Sick Leave under the Families First Coronavirus Response Act dated July 15 and August 10, 2020.

In a development letter dated January 20, 2021, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor and details regarding appellant's alleged COVID-19 exposure. It afforded both parties 30 days to submit the necessary evidence.

In a letter dated March 16, 2021, OWCP informed appellant that her claim would be reviewed under the provisions of the newly enacted American Rescue Plan Act of 2021.

By decision dated March 22, 2021, OWCP accepted appellant's claim for COVID-19. By separate decision of even date, it denied her claim for COP, finding that she had not reported her injury on an OWCP-approved form within 30 days of the accepted July 10, 2020 employment injury. OWCP noted that the denial of COP did not preclude appellant from filing a claim for disability due to the effects of the accepted employment injury.

### **LEGAL PRECEDENT**

Section 8118(a) of FECA authorizes COP, not to exceed 45 days, to an employee who has filed a claim for a period of wage loss due to a traumatic injury with his or her immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of

this title.<sup>3</sup> This latter section provides that written notice of injury shall be given within 30 days.<sup>4</sup> The context of section 8122 makes clear that this means within 30 days of the injury.<sup>5</sup>

OWCP's regulations provide, in pertinent part, that to be eligible for COP, an employee must: (1) have a traumatic injury, which is job related and the cause of the disability and/or the cause of lost time due to the need for medical examination and treatment; (2) file Form CA-1 within 30 days of the date of the injury; and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.<sup>6</sup>

### **ANALYSIS**

The Board finds that appellant has not met her burden of proof to establish entitlement to COP.

Appellant filed written notice of her traumatic injury (Form CA-1) on January 13, 2021; however, her injury occurred on July 10, 2020. By decision dated March 22, 2021, OWCP denied her request for COP, as her claim was not filed within 30 days of the accepted July 10, 2020 employment injury. It noted that the denial of COP did not preclude appellant from filing a claim for disability due to the effects of the accepted employment injury. Because appellant filed written notice of her traumatic injury claim (Form CA-1) on January 13, 2021, the Board finds that it was not filed within 30 days of the accepted July 10, 2020 employment injury, as specified in sections 8118(a) and 8122(a)(2) of FECA. Accordingly, appellant is not entitled to COP.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish entitlement to COP.

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<sup>3</sup> *Supra* note 1 at § 8118(a).

<sup>4</sup> *Id.* at § 8122(a)(2).

<sup>5</sup> *E.M.*, Docket No. 20-0837 (issued January 27, 2021); *J.S.*, Docket No. 18-1086 (issued January 17, 2019); *Robert M. Kimzey*, 40 ECAB 762, 763-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

<sup>6</sup> 20 C.F.R. § 10.205(a)(1-3); *see also T.S.*, Docket No. 19-1228 (issued December 9, 2019); *J.M.*, Docket No. 09-1563 (issued February 26, 2010); *Dodge Osborne*, 44 ECAB 849 (1993); *William E. Ostertag*, 33 ECAB 1925 (1982).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 22, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 14, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board